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The CASE of Alexander Mac Donnel Esq; and the Lady Elizabeth his Wife, one of the Daughters of Henry late Earl of Arundel, deceased, and one of the Grand-children of Thomas Earl of Arundel deceased, and of the Lady Alatheia, late Wife of the said Earl Thomas, and late Countess of Arundel, deceased.

THe said Lady *Elizabeth* being an Infant of about two years of age, at the time of the death of her said Father, the now Earl Marshal of *England* took her from her Mother into his Care and Government, he being the second Son of the said Earl *Henry*, and Brother of the said Lady *Elizabeth*, and affirming, that by reason of the Lunacy of their eldest Brother (the now Duke of *Norfolk*) their said Father had engaged and entrusted him to be, and he the said Lord Marshal had solemnly promised to be in the place of a Father unto all his younger Brothers and Sisters. And though the Countess of *Arundel*, their Mother, was otherwise desirous to have performed the obligation of a Mother, in keeping and taking upon her the care of the said Lady *Elizabeth*, and would have maintain'd her at her own costs and charges: Yet considering the trust which the said Earl *Henry* had put in his said second Son, and that he had vested an Estate in him, and made provisions for him much exceeding the quality and expectation of a second Son, merely to oblige and enable him to perform the said Trusts, and to support the Honour of his Family: And that no imaginable reason could be given why the said Earl *Henry* should make such provisions for his said second Son, but only to bind him in Conscience, Honour, and Equity, to provide for, and be as a Father to all his younger Brothers and Sister. The said Countess their Mother, was willing to deliver up the said *Elizabeth* into his hands, he engaging and declaring, (as he hath frequently since declared) that so long as she continued under his care, her maintenance should be at his charge, or to the like effect.

The said Lady *Elizabeth* lived under the Care and Government of her said second Brother, the said Lord Marshal, partly in *England*, and partly in parts beyond the Seas, whither his Lordship sent her, until the time of her marriage with the said *Alexander Mac Donnel*, which happned about *July* 1674. and in all that time she was made to believe, that she was kept by the sole Charity of the said Lord Marshal, who upon all occasions did use to declare, that there was no provision made by her Father for any Portion for her; and therefore he did generally dissuade her against Marriage. But upon her Marriage with the said *Alexander Mac Donnel*, he the said *Alexander* did discover in general, that there were some Trusts created and raised by the said Earl *Henry*, which were to be a future provision for his younger Children. And that albeit he had vested the greatest bulk of the Estate of his Family in his said second Son, to support his Family, and to maintain his younger Children, yet he had made some provisions for his younger Children likewise, which in time might arise to some value, in case his eldest Son, the now Duke of *Norfolk*, should live and continue Lunatique. And in particular, it was by great diligence discovered.

1. That the said Lady *Elizabeth* was intituled to the Inheritance of one twelfth part of the overplus of a very great Estate in several Counties, which had been formerly vested in Trustees for the raising of monies for the payment of several Debts of the said Earl *Thomas* and Earl *Henry*: upon which particular Trust it was affirmed, and offered to be proved, 1. That by the skill and industry of the said Lord Marshal, and his Agents, the said Debts were so paid, or by Compositions agreed and discharged, that there remained a very great overplus of the said Estate. 2. That before the Kings Majesties most happy Restauration, the said Debts being wholly cleared, the Trustees of that Estate had conveyed the said overplus unto the said Lord Marshal in Fee. So that from the time of the said Conveyance made, his said Lordship stood seized of one 12th. part thereof in trust for the said Lady *Elizabeth* in Fee, and in trust to be accomptable for the profits thereof; or at the least, he was to pay unto the said Lady *Elizabeth* three thousand pounds, with the Interest thereof from that time. 3. That some of the Brothers of the said Lady *Elizabeth*, particularly *Edward* and *Bernard*, had been prevailed with by the said Lord Marshal, at the respective times of their coming to their respective ages of 21 years, to believe their respective Interests in this Trust, was not worth above one and twenty, or two and twenty hundred pounds apiece: And for those or the like respective sums, to release their said respective interests to the said Lord Marshal, and in lieu thereof, to accept of three hundred pound *per annum* apiece, for their respective lives, charged upon certain Lands in the County of *York*, which were formerly so charged, that the yearly values of the

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same, were not so much as the Rents which were then in the whole charge upon them. So that by this very Act, the said *Alexander Mac Donnel* found reason to conclude, that there was something at least due to his said Wife, and to him in her right upon this Trust.

2. That the said Lady *Elizabeth* was intituled from the death of her said Father, or at leastwise from the death of the said Grandmother the Countess *Alathea*, unto the twelfth part of a very great Estate in the several Counties of *York*, *Middlesex*, *Sussex*, and *Southampton*, for the life of her said Brother the now Duke of *Norfolke*, who being Tenant for life thereof, without Impeachment of Wast, had been prevailed with, by the said Earl *Henry*, in his time, to convey all his Estate, Powers, and Interest therein, by a Fine *Sur concessit*, unto certain Trustees, and their Heirs, without Impeachment of Wast, to be subject to such Trusts as should be declared by the said Earl *Henry*, who had declared that the same should be in trust; 1. For the paying of a thousand Markes *per annum* to the said Duke of *Norfolke*. 2. For the paying a thousand pounds *per annum* to the Countess of *Arundel*, Mother of the said Lord Marshal and Lady *Elizabeth*, during her life. 3. For the raising a thousand pounds gross sum for the Lady *Katherine*, one other of the Daughters of the said Earl *Henry*, who had eight thousand pounds otherwise secur'd unto her for her Portion. 4. And the residue of the said Estate to be in trust, one moyety thereof for the said Lord Marshal, and the other moyety for six of the younger Children of the said Earl *Henry*, viz. *Charles*, *Edward*, *Francis*, *Bernard*, *Esme*, and the said Lady *Elizabeth*. But when the said Lady *Elizabeth*, and her said Husband, applyed to the said *Edward* and *Bernard* for further information touching this particular trust, they both professed, and are ready to make Oath; 1. That they knew nothing of the same, untill of late. 2. That they never had received any satisfaction for the same. And 3. That they never had received any thing by virtue of any Trust, or as any provision made for them by the said Earl *Henry* their Father, but only so much as was the consideration or price, for the granting unto them respectively, by the said Lord Marshal, their said before mentioned respective Rents of three hundred pound *per annum* apiece for their respective Lives.

3. That upon the death of the said Countess *Alathea*, Intestate; and as the share of all the Children of the said Earl *Henry*, except *Charles*, in the said personal Estate, there had been delivered into the hands of the said Lord Marshal, a certain Cabinet furnished with Jewels, Medals, precious Stones, Pictures, Drawings, designs for Painting and Drawing, Sculptures, and other Rarities and Ornaments, which cost at several times about Fifty thousand pounds sterling, (as was affirmed by such as knew the said transactions :) so as that one Ninth part thereof was to his own use, and the other Eight parts thereof was in Trust for six off his Brothers, viz. the now Duke of *Norfolke*, *Philip*, *Edward*, *Francis*, *Bernard*, and *Esme*, and for two Sisters, the Lady *Katherine*, and the said Lady *Elizabeth*; but their Brother *Charles* was to have no share therein, for that he had otherwise accepted of a thousand pound ready monies for his particular share of the said Intestates personal Estates, and was not therefore to be concern'd in the said Cabinet. Upon this, the said Lady *Elizabeth* and her said Husband, endeavoured to find from their said Brothers, and particularly from the said *Edward* and *Bernard*, what they had received from the said Lord Marshal, in satisfaction for their respective shares in the said Cabinet. But they could not discover, that any of them had ever, at any time, received any thing upon that accompt.

These particulars being understood, the said *Alexander Mac Donnel* applyed to the said Lord Marshal, to have an accompt, and to receive what was due to him in the right of his said Wife. Upon the first address, his Lordship was pleased to desire her removal from *Arundel-house* (wherein she hath an Interest by virtue of the said Conveyance, as well as the said Earl) affirming, that the next day after her removal, her Portion should be adjusted and paid; and that the said *Alexander Mac Donnel*, and his Council, should see and peruse all Writings which related to the same; whereupon the said Lady *Elizabeth*, about September Anno Domini 1674. relying on the said promise, removed from *Arundel-house*: Yet notwithstanding, neither the said *Alexander Mac Donnel*, nor his Council, could have sight of any Writings relating to the said Portion, till a long time after, though my Lord Marshal was often solicited for the same. And after that, for further delay, his Lordship seemed not satisfied, that his said Sister, the said Lady *Elizabeth*, was married. Whereupon she and her said Husband immediately applyed themselves to give proofs, and did give sufficient proofs, as to that particular point, unto his Lordship; and the rather, for that his Lordships desires to receive satisfaction, as to that particular, seemed to them to imply some good intention in his Lordship, to give them a satisfaction as to what they demanded of his Lordship; but they soon saw their mistake as to that particular: for after they had given unto his Lordship sufficient evidences of their being lawfully married, they were able

to gain no more from his Lordship, then the view of such settlements as his Lordship thought fit to shew unto them, in order to spend time; and which informed them very little more then they knew before, only they were thereby confirmed, that there were such settlements as they had been before informed of; and that there were no more of the said respective Trustees, to whom the before mentioned respective premises were conveyed, now living, then only the Right Honorable the Lord Marquess of *Dorchester*, and the Earl of *Peterborough*. But as touching any accompt or satisfaction of or for what was due unto the said Lady *Elizabeth*, upon the said respective Trusts, the said Lord Marshal was pleas'd, after much attendance upon his Lordship, to give them notice, that he did not know that there was any thing in arrear, or due unto them upon the said Trusts, or any of them. But on the contrary, his Lordship was pleas'd to affirm, that the said Lady *Elizabeth* was indebted unto him in several great sums of money, for her maintenance since the death of her Father; and for monies laid out for her since that time, which his Lordship did expect should be reimburs'd unto him by her said Husband, or secured out of what should be coming due unto her, by virtue of the said Trusts for the future, in case there should be any thing hereafter growing due unto her upon the said Trusts, or any of them.

Upon this several Applications were made unto the said surviving Trustees, the said Marquess of *Dorchester* and the said Earl of *Peterborough*, who were so far from giving any satisfaction in relation to the said premises, that they appeared not to understand any thing of the said Trusts, but to have remitted the whole management of the same to the said Lord Marshal: And their Lordships being humbly desired, on the behalf of the said Lady *Elizabeth* and her said Husband, to give leave for the exhibiting a Bill against them in his Majesties High Court of Chancery, in relation to the said premises; and to vouchsafe their Answers to the same, without insisting upon Parliament-Privilege, (the Parliament being then sitting) their Lordships were pleas'd to declare, that they would willingly so do, in case the Lord Marshal would consent thereunto; But that they were obliged to be governed by the directions of the said Lord Marshal, in relation to the said premises, they expecting to be saved harmless by him in relation to the said Trusts.

That thereupon the said *Alexander Mac Donnel* applied himself to the Lord Marshal, acquainting his Lordship how he had spent much time in waiting upon, and treating with his Lordship, without any effect, whereby Privilege of Parliament was then in being; and did hope his Lordship would not take advantage thereof, but would waive the same, so that a Bill might be exhibited against his Lordship and the rest of the Trustees; which he then consented unto, and promised to waive his Privilege, and to appear and Answer the said Bill forthwith. But instead of so doing, his Lordship after he was served with a Letter missive out of the Court of Chancery, re-assumed his Privilege, and travell'd into *France*, without putting in any Answer to the said Bill, or appearing thereunto, according to his promise. And at his Lordships return, 'tis not doubted but 'twill be made appear, that a motion was made in the House of Lords for the committing him the said *Alexander Mac Donnel*, for suing forth Process against his Lordship during Privilege of Parliament.

This being the Condition of the said *Alexander Mac Donnel*, and the said Lady *Elizabeth*; and finding that they were to expect no relief, but what they could obtain from a Court of Equity; and that during the sitting of Parliament, they could not hope to be enabled to proceed in any Court of Equity against the said Lord Marshal and the said Trustees, without their Lordships would please to waive their Privileges voluntarily, which they refused to do; or that the House of Lords would please by their Order to direct them so to do: The said *Alexander Mac Donnel* and Lady *Elizabeth* exhibited their Bill in his Majesties High Court of Chancery, in or about *Hilary-Term* 1674. against the said Lord Marshal and the said Trustees, to be relieved upon the said respective Trusts: And they put in their Humble Petition to the Lords House, praying that by their Lordships Order the said Lord Marshal, and the said Trustees the said Lord Marquess of *Dorchester* and Earl of *Peterborough*, might be directed to appear and Answer to the said Bill, and to waive their Privileges in relation to the said Suit; And the rather, for that it concerned several matters, wherein the said Lords who were Defendants were all of them no other then Trustees. Against this Petition some Objections were made, which required some alteration to be made therein. But before the said alterations could be made, the Parliament was Prorogued. Whereupon, and so soon as the time of Privilege was expired, the said Lords Defendants had Letters missive sent and delivered unto them, requesting their Appearance and putting in of their Answers to the Bill before mentioned; But the said Lord Marshal, and (by his request, as 'tis conceived) the said Lord Marquess of *Dorchester* and Earl of *Peterborough*, were pleas'd to sit Contempts, and to compel the said Plaintiffs to move for Sequestration against them. But before any Seque-

stration could be obtained, and in order to prevent the same, and likewise, (as is conceived for the avoiding of any further addresses to the Parliament, (then shortly to sit) in relation to these affairs, the said Lord Marshal was pleased to make an Overture to the said *Alexander Mac Donnel*, of submitting all matters in difference between them, to be determined by Referrees to be indifferently chosen between the said parties Plaintiffs and Defendants; declaring, that if that would be accepted, for the avoiding of expences and charges of Suits, his Lordship would produce to the Referrees to be chosen, all Deeds, Writings, Books of Accompts, and other things which could be required to be produced; and would engage that the said other two Lords Defendants, should joyn in the submission to the said Reference; and that they, as well as himself, would be bound by such Award as the Referrees so to be chosen should think fit to make, in relation to the said differences. To this the said Plaintiffs were willing to consent, so as the said Lords Defendants would please first to appear, and put in their respective Answers to the said Bill, then before exhibited against them as aforesaid; And agree, that there should be an Order passed in the said Court of Chancery, by consent of all the said parties, for referring of all the matters contained in the said Bill, and to enable the Referrees to examine Witnesses upon Oath; And that what Award should be made by the Referrees, or the major part of them, should be confirmed by the Decree of the said Court. But the Lord Marshal did not relish this strictness; however to the end he might draw on the Reference, he proposed to have the Referrees named and agreed unto, and then that they should meet and settle circumstances, all which was assented unto. The Referrees were two Lords, and two Commoners; who being named, were pleased to accept of the trouble, and to agree on the time for their first meeting, which was justly complied with. Upon the first meeting of the Referrees, the said Mr. *Mac Donnel* proposed the same Conditions for the Reference which he had formerly offered, to the intent to render it effectual; but the Lord Marshal absolutely renounced every one of the said Conditions, he would stand no further engaged to any performance, then upon the obligation of his Honour, and would have no Witnesses to be examined upon Oath: And if the Reference might be admitted upon those terms, and that Mr. *Mac Donnel* would also admit and engage, that what should be found due upon the several Claims made by the said Plaintiffs, should be disposed of to purchase an Annuity for the life of the said Lady *Elizabeth*; his Lordship would engage that himself, and the said two other Lords Trustees, should stand to such Award as the said Referrees should make, concerning the Matters contained in the Bill; and engaged then upon his Honour, that the same should be performed on his and their parts. Mr. *Mac Donnel* looked on this proposal as being capable of a double interpretation; 1. It might be taken to shew the Lord Marshal's zeal and care for his said Sister: 2. And it might be used under colour of a care for the Lady *Elizabeth*, either to bring on the Reference upon such terms as should leave it loose and ineffectual, or else to have it refused at that time, with the imputation fixt on Mr. *Mac Donnel* of denying to have a Security made for his said Wife. But however it might be understood, Mr. *Mac Donnel* agreed to the Reference upon the Lord Marshal's own terms; And thereupon the Referrees agreed, and all the parties consented, that the examination of all the Deeds, Writings, Evidences and Books of Accompts, and all other things which were to be produced and Examined, and all matters of fact to be enquired into, relating to the Matters in difference, should be for the ease of the two Lords Referrees, referred unto the two Commoners Referrees, to examine and enquire into, and they to make Report to the two Lords Referrees, of what should appear unto them upon such their examination and enquiries, together with their opinions thereupon, as also, such particular matters wherein they should happen to differ: And the general matters Referred, were then particularly nominated as followeth; viz.

1. Whether any thing was due, and what was due unto the said Lady *Elizabeth* upon the Trust of the said Lands, of which the said Fine Surconcessit was levied.
2. Whether any thing was due, and what was due unto the said Lady *Elizabeth* out of the residue of the Lands remaining unsold, which were conveyed for the payment of the Debt of Thomas and Henry Earls of Arundel before mentioned.
3. Whether any share, and what share of the before-mentioned Cabinet of the said Countess Alatheia, (with what belonged thereunto) was due unto the said Lady *Elizabeth*.

The said two Referrees thus appointed to enquire into, and examine the said several particular matters so referred unto them, had their first meeting before Michaelmas Term last, and were attended by the said Lord Marshal's Agent, who were directed by his Lordship to produce and shew forth unto them, what they should desire to see, that was within his Lordships power, for the clearing and discovering of the truth, touching the several matters Referred: And they resolved in the first place, to consider what concerned

cerned the Trusts of the Lands within the Fine *Sur concessit*, as finding from the Information of his Lordships said Agent, that the greatest difficulties would arise upon that Trust: And that when they had fully examined what related to that Trust, they would then examine the other matters Referred.

After their having resolved on this method, the said two Referrees had very many meetings with the said Lord Marshals Agent; he produced them to several Deeds relating to the said Lands which were within the said Fine *Sur concessit*, and the Trusts of the said Fine; As also several Books of the Accompts relating to the said Estate, with Abstracts of the said Accompts: All which he affirmed to be true, but he was prohibited by the said Lord Marshal to allow any Copies to be taken of any the Rentals of the said premisses, although the same were desired with great earnestness; to the end to have the same examined with the Tenants of the said premisses: It being much insisted and offered to be proved, that some at least of the Rentals entred in those produced Books, were not true, and that there had been more received then was mentioned in those entred Rentals. He also refused to give any accompt, or to mention in his said Abstracts, or to discover the particular Accompts, or any general Accompt of what was raised by Timber which was felled upon those Lands; only he did once affirm, that the same amounted to more then fifteen thousand pounds. The Accompts by him stated were only until *Michaelmas* 1674. and no farther, but he often promised to produce the accompt for the year beginning from *Michaelmas* 1674. and ending at *Michaelmas* 1675. but never did it. Many difficulties occurred upon the examination of what concerned the Trusts of these particular Lands, which were included in the said Fine; and which difficulties were used with that dexterity, that though they seemed sometimes to threaten the total determination of the Reference, yet at other times they seemed reconciled, and had certainly been reconciled, had the Lord Marshal intended the said Reference to have been effectual: For 1. on Mr. *Mac Donnell's* part nothing was insisted on; but what his Council did assure him was clearly his right in Equity, and which upon Conferences between his said Council, and the Council of the Lord Marshal were put into such a certain way of being reconciled by concessions made by Mr. *Mac Donnell*, that they all seemed in a manner to be several times overcome. 2. It was agreed by both parties at the entrance upon the Reference, that if any difficulty should arise either in Law or Equity the same should be drawn up into a Case by Council on each side, and then be determined by some of the Judges, to be chosen by the Lords Referrees. 3. The said Mr. *Mac Donnell* on his part, though against his Interest, was ready to admit every thing for current which was alledged out of the Books of Accompts, produced on the part of the Lord Marshal. And 4. always declared himself ready, without the least contradiction or repining, to submit to whatever three of the Referrees should order. But on the Lord Marshal's part there were grounds of Jealousies given during the whole treaty; and at the close of it, a sufficient evidence that his Lordship intended this treaty only to spend time: For, 1. though it was naturally to be allowed reasonable, that Mr. *Mac Donnell* should be allowed to pick up what proofs he could, for discovering what was due unto him, and the Lord Marshal agreed the same to be just; yet where any person was so kind, as upon his request to give him any kind of Information which were usefull to him, that person did immediately fall under his displeasure: particularly his Lordships two Brothers, *Edward* and *Bernard*, the one for furnishing a proof, that his Mother allowed one tenth part of her Annuity of a thousand pounds, due upon this Trust, for publick Taxes; and the other for endeavouring to find out a true Rental of part of the Estate which is within this Trust, did so totally lose all favour with his Lordship, that he hath totally stoped the payment of their before mentioned respective Annuities of three hundred pounds, so granted unto, and purchased by them as aforesaid; which with the barring of several contingent Estates in the Counties of *Cumberland* and *Westmerland*, limited by their Father to come to them after the death of the now Duke of *Norfolke*, when this present Estate upon the Fine *Sur concessit* shall determine is to deprive them of all the Estate which by their Father was intended for them and thire Children. And 2. though the three several particular matters, originally submitted upon the Reference to be determined, were all of them clearly, plainly and distinctly specified and submitted, yet at the last meeting of the Referrees upon these matters, his Lordship expressly denied that two of them, *viz.* that of the overplus of the Lands conveyed for payment of the Debts, and that of the Cabiner, were ever intended to be by him submitted in Reference.

In the several transactions upon this particular point of the matters submitted, it appeared certain, and owned by the Lord Marshalls own Agent, who managed this affair on his Lordships part, 1. That besides the monies raised by Fines, which own'd to be received upon making of Leases, this Trust stood charged with the Receipt, as appeared by

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his Lordships books produced, of one hundred thirty four thousand four hundred sixteen pounds five shillings and seven pence half penny. 2. The said Fines, owned by the said Books to have been received, amounted unto, as owned by his Lordships said Agent, fourteen thousand nine hundred fourteen pounds sixteen shillings and eleven pence. What the Timber did amount unto in certain, his Lordships Agent would not discover; nor could he permit the said books to be examined or viewed, as to that particular, declaring, that the Lord Marshal had expressly prohibited him, not to discover the accounts touching the Timber. But his Lordships Agent did freely own that the value of the Timber felled within the Lands, in the County of *Tork*, which were but part of the Lands within this Trust, did amount unto more then fifteen thousand pounds, not reckoning any part of the Timber felled there since *Michaelmas* 1654. which was of very great value; so that the Charge confessed, for which this Trust was to be accomptable, was one hundred sixty four thousand three hundred thirty one pounds two shillings & six pence half penny at the least.

It also appeared certain, that the said Trust stood charged to pay unto the now Duke of *Norfolke*, six hundred sixty six pounds thirteen shillings and four pence, which for 20 years came unto thirteen thousand three hundred thirty three pounds six shillings and eight pence. Also the said Trust stood charged to pay unto the late Countess of *Arundel* for eighteen years three quarters *per annum* a thousand pounds, which come unto eighteen thousand seven hundred and fifty pounds. And to the Lady *Katherine*, the gross sum of a thousand pounds; which in the whole, made up the sum of thirty three thousand eighty three pounds sixteen shillings and eight pence. But the Lord Marshal, before the said Reference submitted unto, had declared (it hath been said, that he declared it by an Oath, or upon his Honour) that the said Lady *Elizabeth* was in debt. Wherefore in order to make that good, it was urged, and promised to be proved upon Oath, but no proof ever offered, that the said Earl *Henry*, when he declared the Trust of the Lands contained in the said Fine *Sur concessit*, did limit unto the said Lady *Katherine* a thousand pounds *per annum* for her life; not a gross sum of a thousand pounds, and accounting a thousand pounds *per annum* annuity to the said Lady *Katherine* for Life, as an addition to her Portion of eight thousand pounds before mentioned. The Lord Marshal, by his Agent, demanded to have allowed for three annuities, *viz.* those two before mentioned, to the Duke of *Norfolke* *per annum*, six hundred sixty six pounds thirteen shillings and four pence, and the said Countess *per annum* a thousand pounds; and this to the said Lady *Katherine* *per annum* also a thousand pounds. For all which insisted to have deducted the gross sum of forty five thousand four hundred sixteen pounds ten shillings and three pence. He also demanded to have deducted (which depended upon the Case to be drawn) ten thousand seven hundred twenty pounds ten shillings and three pence, pretended to be allowed to the said Countess [his Mother for her Dower of part of Lands within the said Fine *Sur concessit*: so that for the three Annuities, and the pretended Dower, it was demanded to have deducted the sum of fifty six thousand one hundred thirty seven pounds and six pence, out of the foresaid charge of one hundred sixty four thousand three hundred thirty one pounds two shillings and six pence half penny, which would reduce the said charge which was to be accompted for, unto the sum of one hundred and eight thousand one hundred ninety four pounds two shillings and one half penny. Of which said sum it was agreed, that the Lady *Elizabeth* was to have one twelfth part, all necessary Charges in the execution of the said Trust being deducted. And it is very hard to be imagined, that the necessary Charges of the execution of this Trust should be so very great, as to leave nothing to be due to the said Lady *Elizabeth* out of such a competent sum, as one hundred and eight thousand one hundred ninety four pounds two shillings and one half penny. But that notwithstanding her being confessedly entituled unto a 12th part of this sum, she should be a Debtor to the Lord Marshal.

As to the other matters referred, *viz.* touching first the residue of the Lands remaining unsold, which were conveyed to the Trustees for payment of the Debts of the said Earl *Thomas* and Earl *Henry*; and 2ly, the Cabinet of the Countess *Alathea*. There were no Accompts produced, but what passed in relation to the same, was as followeth, *viz.*

As touching the said Debts, the said Lord Marshals Agents told the said Referrees, that no accompt could be given what was paid, or to whom paid, and when the particular Debts paid were discharged: And that if it were possible to make up any true accompt of those particulars, he could not under take to do the same in a years time; but that all the present true state of that affair which he could give them with certainty, was, 1. That the whole principal Debts of the said Earl *Thomas* and Earl *Henry*, amounted to one hundred and six thousand pounds. 2. That of these Debts there was paid in the said Earl *Henry's* life time by Lands and Wood sold in the County of *Salop*, about twenty six thousand pounds: And by Timber sold out of *Earsham* Park, about four thousand pounds, which

which makes in the whole about thirty thousand pounds. And 3. That since the said Earl *Henries* death, there had been in or before the year 1658, raised and paid by Sales of Land and Timber, upwards of seventy three thousand pounds, which being added to the said former sums, amounts to one hundred and three thousand pounds, which being deducted out of the said gross Debt, there appears to remain only three thousand pound. And if an account were given of the profits of the said Lands, subject to the said Trusts, unto the year 1658. and of what remains unsold of those Lands, it were no hard matter, in all probability, to satisfy any indifferent judgment, that the respective shares of the before-named two Brothers *Edward* and *Bernard*, of and in the overplus of those Lands remaining unsold, was worth at least two thousand two hundred pounds apiece to them: And that his Lordship had no hard bargain when he prevailed with them to release their respective interests in the said Trusts, for the aforesaid respective Annuities of three hundred pounds apiece for their respective lives. And there is no doubt, but that upon such an account given as aforesaid, the said Lady *Elizabeth* might reasonably expect to have three thousand pounds for her share of those Lands, with Interest for the same from the time that those overplus Lands were by the Trustees of that Estate, conveyed unto the said Lord Marshal in Fee.

And yet notwithstanding all this, and that the said Earl *Henry*, upon a computation made of the values of these Lands, relied upon the one moiety of the overplus of them which would remain unsold, to be a certain provision upon which to raise three thousand pounds apiece for his six younger Children. The Lord Marshal is pleased now positively to deny, that the said Lands were of value sufficient, or at least of no more value, then to be sufficient to satisfy Debts which were charged upon them; and consequently to deny, that there remains any overplus of them to be divided, or any such sum as three thousand pounds apiece; or in truth, any sum at all to be due to any of the younger Children of the said Earl *Henry*, for, or in respect of any overplus of these Lands. But how far this allegation will make good that opinion which the world hath generally had of the understanding and good economy of the said Earl *Henry*, and how far this, and the former allegation of the said Earl *Henry*, his intention to charge the aforesaid premises contained in the Fine *Sur concessit*, with an annuity of a thousand pounds *per annum* to his Daughter the Lady *Katherine* for her life, will consist with the opinion which the world hath hitherto had of the care and affection of the said Earl *Henry*, for and toward his younger Children, who could never be supposed to have deserved ill from him, is not certainly well considered by the Lord Marshal. It is clear, the said Earl *Henry* could not but know, that the provision made out of the Lands in the Fine *Sur concessit*, depended wholly upon the contingency of the Duke of *Norfolk's* life; so that if he had dyed immediately after the said Earl *Henry*, that intended provision had ceased; yet out of that, the Lord Marshal would have it supposed, that his Father intended a thousand pounds *per annum* for the Lady *Katherine*, for whom he had secured otherwise eight thousand pounds for a Portion. And if these Lands, charged for payment of Debts, be no more then sufficient to pay those; and yet were relied on by the said Earl *Henry*, to secure three thousand pounds apiece to his younger Children. It is clear, that either through want of understanding, or of natural affection in the said Earl *Henry*, his said six younger Children, by the death of the Duke of *Norfolk*, must have been cast upon the Parish where they were born for their maintenance, whilst the said Lady *Katherine* was secured a Portion of eight thousand pounds. And the Lord Marshal was in effect, left to be Master of all the great Estate of that Family. Doubtless the Lord Marshal would not be pleased, that any other person besides himself, should lay such grounds for the wounding the Honour and Worth of his deceased Father, whose memory is so highly, and with great reason, valued by all who had the honour to know him, except by him in whom he placed his trust of preserving the Honour of his Family.

As touching the Cabinet of the said Countess *Alathea*, there was no other account given, but what the Lord Marshal gave himself; which was, that he did receive the Cabinet in question, from the Lord Viscount *Stafford* in *Holland*, as is alledged. And that upon his first receiving the same into his custody, he sent the same to *Antwerp* in *Flanders*, from whence he conceived, he might with more ease and security, then from *Holland*, draw the same into *England* at his pleasure; and that for the better securing of it, he caused it to be left in the *English* Monastery in that City; but his Lordship affirms, That one Mr. *Lionel Wake*, an *English* Merchant then residing in *Antwerp* (and since dead) by his interest with the then Bishop of that place, procured the said Cabinet to be taken out of the said Monastery, and pretending a Debt due unto him the said Mr. *Wake*, from the said Countess *Alathea*, or her deceased Husband the said Earl *Thomas*, he attached the said Cabinet, for the said pretended Debt, and procured the same to be condemned and delivered unto him by due course of Law there, in satisfaction, or towards the satisfaction of his said pretended Debt. And this the Lord Marshal delivered as the true history and account of the said Ca-

binet; not without some insinuation, that what was so done, was so done by the private procurement of the said Lord *Stafford*: as if he, by his Artifice, had found a way to satisfy a Debt to the said Mr. *Wake*, which would otherwise have been recovered against himself, as Administrator of the said Countess *Alathea*. But upon further enquiry by the said Mr. *Mac Donnel*, into that affair, he doubts not but to prove, that what was sent by the Lord Marshal, and lodged in the said Monastery at *Antwerp*; and afterwards attacht and delivered in Execution there, unto the said Mr. *Wake*, was only the very Cabinet it self, that is, the empty Caske or Case wherein all the Jewels and things of value delivered by the said Lord *Stafford* unto the said Lord Marshal, for his share, and the share of the before named Brothers and Sisters, of the personal Estate of the said Countess *Alathea*, were contained at the time of the delivery thereof to the said Lord Marshal: And that the Jewels, and other things of value contained in the said Cabinet, were taken out of the same by the Lord Marshal, and his order, and convey'd into *England*; and the said empty Cabinet sent to *Antwerp*, and there attacht, condemn'd, and deliver'd in Execution. And if the whole proceedings upon this matter be fully considered, there may be some colour of a jealousy, that what was so done, was by the private direction or consent of the said Lord Marshal: if at least it shall appear, which is offered to be proved, and not contradicted by the Lord Marshal, that there was no defence made by the Lord Marshal against the said Suit; and which is averred by the Lord *Stafford*, that there was not one penny due unto the said Mr. *Wake* from the Estate of the said Countess *Alathea*, or of the said Earl *Thomas*.

At the last meeting of the Referrees, which was after *Trinity*-Term last, the two Lords Referrees, and one of the others being present, and the Lord Marshal and Mr. *Mac Donnel* being there also; a Paper was offered to be read, and was in part read, wherein was briefly contained a summary account of the Matters referred, as they had been then lately at the recommendation of the said Lords Referrees, and by the consent of the said Lord Marshal and Mr. *Mac Donnel*, particularly debated between one of the said Commoners Referrees and the said Lord Marshal's Agent; in order to the reconciling what was in difference so far as might be: And the bringing what they could not reconcile into as narrow a compass as the matters would admit. But upon the reading of so much of this Paper as was read, the Lord Marshal seem'd to dislike almost every particular which was contain'd in it: And above all those particulars which related to the overplus of the Lands which were conveyed for the payment of the Debts before mention'd, and to the Cabinet of the Countess *Alathea*; to both which his Lordship averred, that he neither had, nor would refer what concerned those two particular matters. Upon this one of the Lords Referrees was pleased to answer, that if those two matters were not submitted in this reference, he did not understand that any thing was submitted. Whereupon that Noble Lord declared, that he did not conceive that these matters in difference could be determined by way of Reference, or otherwise then by a Court of Judicature. And that for that reason it was his opinion, that they should now determine the said Reference: And that he was sorry it had been continued so long as to lose Mr. *Mac Donnel* the benefit of four Terms, or to the like effect: And demanding the opinion of the other two Referrees then present, whether it was not fit the said Reference should be determined: And they agreeing thereunto, that Lord was pleased to declare the same to be determined.

Only before the said Reference was declared absolutely to be determined, that honourable Lord who first declared his opinion for the determining it, addressing his discourse to the Lord Marshal, told his Lordship in effect, that the Lord Marshal could not but believe in his own Conscience, that out of the great Revenue of the Lands contain'd in the said Fine *Sur concessit*, and the growing Rents of them, something was to be due unto Mr. *Mac Donnel* in right of the said Lady *Elizabeth* his Wife, who he had now kept for some years at his great expence, without receiving one penny of assistance from any Portion of hers, or from any of her Friends. Wherefore he propos'd it to the Lord Marshal, to make his own computation of the profits of that Estate: and at least, to allow so much to the said Mr. *Mac Donnel* of the said growing Rents, as the Lord Marshal should in his computation conceive must be due unto his said Sister, and leave the rest to be determined by a Court of Equity. To which the Lord Marshal gave answer to this purpose, viz. That he did not think it advisable to pay any monies to enable Mr. *Mac Donnel* to maintain a Suit against him, after the Reference was declared to be determined. The Lord Marshal was pleased to say, that he should expect, that after Mr. *Mac Donnel* had spent some seven years in Suit, and tired himself that way, he might probably think fit to propose the acceptance of something in the lump, without insisting upon particulars, or to that effect, implying as Mr. *Mac Donnel* conceived, that his Lordship supposed he could well keep a Suit upon those particulars seven years on foot, and until Mr. *Mac Donnel* should be exhasted by the expence of it: and then Mr. *Mac Donnel* would be glad to take any thing for satisfaction of his Rights, which the Lord Marshal should think fit to give him.